

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-12 ISO-00 AID-05 CIAE-00 COME-00 EB-07

FRB-03 INR-07 NSAE-00 USIA-06 TRSE-00 XMB-02 OPIC-03

SP-02 CIEP-01 LAB-04 SIL-01 OMB-01 SAM-01 NSC-05

SS-15 STR-04 CEA-01 H-02 AF-06 /092 R

DRAFTED BY L/EB:SRBOND:JL

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EUR/WE:GPFOURIER

L/EB:PTRIMBLE

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R 290126Z JAN 76

FM SECSTATE WASHDC

TO AMEMBASSY LISBON

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E.O. 11652: N/A

TAGS: EINV, PO

SUBJECT: REVISED DRAFT FOREIGN INVESTMENT CODE

REF: (A) 75 STATE 270768 (B) 75 LISBON 6651 (C) LISBON 216

1. FOLLOWING IS PRELIMINARY L/EB COMMENTARY COMPARING NEW
DRAFT PORTUGUESE FOREIGN INVESTMENT CODE (REF.C) WITH
EARLIER VERSION (REF. B):

2. DRAFT FOREIGN INVESTMENT CODE CONTAINED IN REFTEL C
REPRESENTS SLIGHT IMPROVEMENT OVER EARLIER DRAFT IN REFTEL
B. TOTAL IMPRESSION IS THAT FEWER INVESTMENT-RELATED
ACTIVITIES WILL NOW NEED PRIOR GOVERNMENT APPROVAL AND THAT
THERE HAS BEEN EFFORT TO SPELL OUT PROCEDURAL STEPS (AS IN
COMPENSATION FOR EXPROPRIATION, REFTEL C, PARA 3B) RATHER
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THAN MERELY THE ENDS TO BE ACHIEVED.

3. INVESTMENT CODE IS, AT THIS STAGE, NOT WORSE THAN THAT OF MANY THIRD-WORLD COUNTRIES, BUT IT IS, AS A WHOLE, FAR MORE RESTRICTIVE AND CONTROL-ORIENTED THAN THE COMPARABLE LAWS OF THE WESTERN EUROPEAN COUNTRIES. IN FACT, MANY OF THE PROVISIONS SEEM TO BE INSPIRED BY LATIN AMERICAN LEGISLATION OR THE CHARTER OF ECONOMIC RIGHTS AND DUTIES. (SUCH AS PARA 7D OF REFTEL C RESTRICTING DISPUTES TO PORTUGUESE LAWS AND COURTS, AND PARA 6 OF REFTEL C, CALLING FOR

AUTHORIZATION OF TECHNOLOGY LICENSING AGREEMENTS). IN THIS REGARD IT IS UNFORTUNATE THAT PORTUGAL HAS NOT RATIFIED ICSID CONVENTION FOR SETTLEMENT OF INVESTMENT DISPUTES, (SEE PARA 2B, REFTEL A) AS HAVE MOST OTHER OECD MEMBERS.

4. ONE PROVISION IS ESPECIALLY PUZZLING. PARA 7C OF REFTEL C FORBIDS TRANSFER PRICING. AS TRANSFER PRICING IS MERELY A TERM FOR THE INTRA-CORPORATE SALE OF GOODS OR SERVICES, IT WOULD SEEM IMPOSSIBLE TO ABOLISH THE PRACTICE.

5. THE 180 DAY AND 270 DAY PERIOD PROVIDED FOR RESPONSES TO INVESTMENT PLANS APPEAR EXCESSIVELY LONG (COMPARED, FOR EXAMPLE TO 60 DAY PERIOD IN FRANCE). TIME MAY BE REALISTIC ONE FOR PORTUGUESE BUREAUCRACY, BUT SUCH A LONG WAIT WOULD SURELY DISCOURAGE SOME INVESTMENTS OR TURN OTHERS SOUR.

6. IN SUM, INVESTMENT CODE SQUARELY PLACES PORTUGAL IN RANKS OF THIRD WORLD, AS OPPOSED TO WESTERN EUROPE, INsofar AS TREATMENT OF FOREIGN INVESTMENT AND TECHNOLOGY TRANSFERS IS CONCERNED, AND ATTRACTIVENESS OF PORTUGAL TO FOREIGN INVESTORS WILL PROBABLY BE BASED ON SUCH FACTORS AS THE COST OF ITS LABOR RATHER THAN ON ANY INHERENT ATTRACTIVENESS OF ITS INVESTMENT CLIMATE. OF COURSE, IMPLEMENTING REGULATIONS AND ACTUAL ADMINISTRATIVE PRACTICE COULD GREATLY AUGMENT OR DETRACT FROM VIEW OF PORTUGAL'S INVESTMENT CLIMATE.

7. EMBASSY COMMENTS, AS WELL AS ANY INFORMATION ON WHEN LIMITED OFFICIAL USE

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CODE MAY BE PROMULGATED, WOULD BE WELCOME. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, STANDARDS, TEXT, FOREIGN INVESTMENTS
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Copy: SINGLE
Draft Date: 29 JAN 1976
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Decaption Note:
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Disposition Approved on Date:
Disposition Authority: morefirh
Disposition Case Number: n/a
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Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Enclosure: n/a
Executive Order: N/A
Errors: N/A
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Handling Restrictions: n/a
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ISecure: 1
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